FILE COPY

Office-Supreme Court, U.S.
FILED
JUL 1 1959
JAMES R. BROWNING, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1959

No. 165

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

J. HART WILLIS,
1408 Tower Petroleum Building,
Dallas 1, Texas,
Attorney for Petitioners.

Of Counsel:
WAYLAND K. SULLIVAN,
HAROLD C. HEISS,
CLARENCE E. WEISELL,
Cleveland, Ohio.

V. C. SHUTTLEWORTH,
Cedar Rapids, Iowa.

WILLIAM P. FONVILLE,
HART WILLIS, JR.
Dallas, Texas.

WARLICK LAW, INC.—1207 HORD STREET—DALLAS—RI 1-6711

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	5
Statement	7
Reasons for Granting the Writ	13
Conclusion	27
Proof of Service	28
Appendix A, Opinion Below	29
Appendix B, Judgment Below	41

Authorities

Cases

Page

Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al., 353 U. S. 30 (1957) 4, 22, 23

Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al. v. Toledo, P. & W. RR., 321 U. S. 50 (1944) 23, 27

Inland Steel Company v. United States, 306 U. S. 153 (1939) 22

Order of Railway Conductors v. Pitney, 326 U. S. 561 (1946) 15, 17, 18, 20

Statutes

Norris-LaGuardia Act, Section 7, 29 U. S. C. 107 5

Norris-LaGuardia Act, Section 8, 29 U. S. C. 108 6

Railway Labor Act, Section 2, Seventh, 45 U. S. C. 152, seventh 6, 25

Railway Labor Act, Section 6, 45 U. S. C. 156 ..... 6, 15, 17, 21, 24, 25, 26

In the

Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen and the Brotherhood of Railroad Trainmen, hereinafter called "petitioners," pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on April 20, 1959.

OPINION BELOW

The opinion of the Court of Appeals (infra, Appendix A) is not as yet reported.

JURISDICTION

The judgment of the Court of Appeals was dated and entered on April 20, 1959. (infra, Appendix B.)

The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

Respondents, claiming the right as a managerial prerogative, unilaterally ordered changes to be made in working conditions embodied in collective bargaining agreements. Petitioners protested and invoked the services of the National Mediation Board.[1] Respondents, declining to maintain the status quo, placed the changes in effect while the matter pended before the National Mediation Board.[2] Upon withdrawal by the National Mediation Board the respondents' employees, represented by petitioners, struck. Respondents, without referring the dispute to any board or committee, sought and obtained a temporary restraining order against the strike.[3] Approximately thirty-four days later, prior to the hearing on the application for a temporary injunction, respondents referred the dispute to the National Railroad Adjustment Board,[4] to the National

[1]R. Vol. 1, p. 66.
[2]R. Vol. 1, p. 66.
[3]R. Vol. 1, pp. 23-23.
[4]R. Vol. 1, p. 69; Vol. 2, pp. 1-54.

Mediation Board,[5] and to various disputes committees created in collective bargaining agreements,[6] and thereupon predicated the claim to an injunction upon the pendency of the disputes before each and all of such bodies. On the hearing of the application for temporary injunction the district court, holding the interpretation of the collective bargaining agreements to be primarily a matter for determination by the Boards and Committees to which the dispute had been referred by the respondents, granted a temporary injunction against the strike pending the determination of the dispute by such boards and committees, on condition that the respondents restore and maintain during that time the conditions which existed prior to the changes provocative of the strike or, at the election of the respondents, pay to the employees adversely affected by such changes the same amounts which the respondents would have paid had the changes not been made.[7] The respondents appealed from that portion of the order requiring the restoration and maintenance of the status quo.[8] The petitioners appealed from that portion of the order enjoining the strike.[9] The court of appeals, on the postulate that the district court is, by the provisions of the Railway Labor Act, denied jurisdiction to pass any kind of preliminary judgment upon the merits of the dispute and that that kind of jurisdiction cannot be exercised under the guise of discretionary equity powers to impose reasonable conditions upon the

[5]R. Vol. 1, pp. 58, 59; Vol. 2, pp. 188-215, 216-261.
[6]R. Vol. 1, pp. 69-72; Vol. 2, pp. 55-76, 77-98, 99-131; 132-145, 146-159, 160-173, 174-187.
[7]R. Vol. 1, pp. 102-103, 136-138.
[8]R. Vol. 1, pp. 104-105.
[9]R. Vol. 1, pp. 149-153.

grant of an injunction, of requiring the respondents to come into equity with clean hands or upon any theory whatsoever, held that the district court was without jurisdiction to require restoration and maintenance of the status quo. That court sustained the order granting the injunction against the strike, and vacated that part of the order requiring the restoration and maintenance of the status quo. The questions presented are:

QUESTION NO. 1: Whether a district court under circumstances where a dispute arising under the Railway Labor Act has been submitted by a railroad to the National Railroad Adjustment Board and an injunction against a strike by employees is sought on authority of *Brotherhood of Railroad Trainmen v. Chicago River and Ind. RR Co., 353 U. S. 30*, may on the granting of an injunction impose reasonable conditions designed to protect the employees against a harmful change in working conditions during pendency of the dispute before the Adjustment Board by ordering that the railroad restore the status quo, or, in the alternative, pay the employees the amount they would have been paid had changes in working conditions giving rise to the dispute not been made?

QUESTION NO. 2: When a carrier and its employees have agreed upon procedural steps to be followed before new intradivisional runs may be established or when a carrier has agreed not to make changes in runs, or changes in terminals, or rearrangements of runs without notice to employees, and has agreed that all rulings in reference to the agreement shall be made in writing and shall not be

made effective unless agreed to by the parties, may such employees be enjoined from striking in an endeavor to compel the carrier to comply with such agreements before new intradivisional runs are established?

STATUTES INVOLVED

Section 7, Norris-LaGuardia Act, 29 U. S. C., Section 107, page 99:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court to the effect —
>
> "(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
>
> "(b) That substantial and irreparable injury to complainant's property will follow;
>
> "(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
>
> "(d) That complainant has no adequate remedy at law; * * *"

Section 8, Norris-LaGuardia Act, 29 U. S. C., Section 108, page 121:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Section 2, seventh, Railway Labor Act, 45 U. S. C., Section 152 (seventh), page 479:

> "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

Section 6, Railway Labor Act, 45 U. S. C., Section 156, page 581:

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period

of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

STATEMENT

Prior to October 19, 1958, there existed established intradivisional runs on the respondents' line of railroad between Wichita Falls, Texas, and Forgan, Oklahoma, as follows: Wichita Falls, Texas, to Altus, Oklahoma, a distance of 75.9 miles; Altus, Oklahoma, to Elk City, Oklahoma, a distance of 58.3 miles; Elk City, Oklahoma, to Woodward, Oklahoma, a distance of 84.8 miles, and Woodward, Oklahoma, to Forgan, Oklahoma, a distance of 83.2 miles. Five crews were assigned to these runs on wayfreight service. Effective 12:01 A.M., October 19, 1958, by General Orders 119 and 120, issued October 2, 1958, the respondents unilaterally and over the protest of petitioners, abolished these intradivisional runs and established new intradivisional runs, to-wit from Wichita Falls, Texas, to Elk City, Oklahoma, a distance of 134.2 miles, and from Elk City, Oklahoma, to Forgan, Oklahoma, a distance of 168 miles. Only three crews were assigned to these runs in wayfreight service.[10]

The respondents are bound by contract with the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen as follows.[11]

> "Article 4—Interdivisional, Interseniority District, Intradivisional, and/or Intraseniority District Service (Freight or Passenger)

[10] R. Vol. 1, pp. 63-65.
[11] R. Vol. 1, p. 16; Vol. 2, pp. 42-43.

"Where a carrier deires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information.

"The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

"If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

"While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good inten-

tions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

"Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

"This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952."

The respondents are bound to an agreement with Order of Railway Conductors and Brakemen and Brotherhood of Railroad Trainmen, which provides as follows.[12]

"ARTICLE 10

"Wayfreight and Mixed Train Service

"Rates of Pay Effective December 16, 1953

"(a) Conductors and brakemen in wayfreight and mixed train service will be paid:

Class	*Per Mile Cents*	*Per Day*
Conductors	15.31	$15.31
Brakemen	13.82	13.82

* * * * *

Runs	*Number of Crews*	*Brakemen per Crew*
Wichita Falls Altus	2	3

* * * * *

(f) No changes will be made in the above runs, nor number of crews assigned to them, unless busi-

[12]R. Vol. 2, pp. 12-14.

ness or changed conditions justify it, nor will terminals be changed, or runs rearranged, without ten (10) days' notice.

* * * * *

"ARTICLE 59

"All rulings in reference to any Article of this Agreement shall be made in writing only by the Officials signing this Agreement and the General Chairman of the O.R.C. and the B. of R. T. organizations will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to by the parties herein mentioned."

The respondents are bound by mediation agreements with the petitioners which provide that the purpose of the agreement is to fix the general level of compensation during the period of agreement which ends in November, 1959, and, with certain exceptions, not applicable to the situation here, that neither the respondents nor any of the petitioners' organizations will serve any notice or progress any pending notice to negotiate agreements which would have the effect of increasing or decreasing the number of employees required to be used under existing agreements.[13]

On October 7, 1958, the petitioners requested the respondents to cancel General Orders 119 and 120. The respondents refused.[14] On October 14, 1958, the National Mediation Board advised the respondents that the petitioners had invoked the services of that board.[15] The respondents, nonetheless, placed their General Orders 119 and 120 into effect at 12:01 A.M. on October 19, 1958, [16] and so

[13]R. Vol. 1, p. 59; Vol. 2, pp. 188, 210, 211-212, 213, 214.
[14]R. Vol. 1, p. 66.
[15]R. Vol. 1, p. 66.
[16]R. Vol. 1, p. 66.

changed the status quo. On October 20, 1958, the National Mediation Board advised the respondents that the petitioners' applications for the services of that board had been given the board's file number C-2827; that its mediator was in Dallas and suggested that the respondents defer contemplated changes pending immediate investigation. The respondents took the position that, having changed the status quo before receiving such suggestion, no restoration was required.[17]

On November 5, 1958, the National Mediation Board notified all parties concerned that its file C-2827 was being closed as of that date.[18] On November 6, 1958, at 6:00 A.M., the employees went on strike.

On November 6, 1958, the respondents, without notice to the petitioners, obtained from the United States District Court for the Northern District of Texas, Dallas Division, a temporary restraining order against the strike.[19] On receipt of notice of the order, the strike was called off.

On or about December 10, 1958, the respondents submitted the controversy to the National Railroad Adjustment Board, First Division.[20] On about December 10, 1958, the respondents submitted the controversy to the National Committees created by Article 4 of the National Agreements dated May 23, 1952, with the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive

[17]R. Vol. 1, p. 66.
[18]R. Vol. 1, p. 66.
[19]R. Vol. 1, pp. 23-28.
[20]R. Vol. 1, p. 69; Vol. 2, pp. 1-54.

Firemen and Enginemen and by Article 6 of the National Agreement dated May 29, 1952, with the Order of Railway Conductors and Brakemen.[21] On or about December 10, 1958, the respondents submitted the controversy to the Disputes Committees created by Article X of Mediation Agreements with the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Engineers, and the Order of Railway Conductors and Brakemen.[22] On about December 16, 1958, the respondents submitted the controversy in two separate submissions on different phases to the National Mediation Board.[23]

At the hearing of the application for the preliminary injunction, on December 18, 1958, the district court heard the argument on the motion to dismiss the amended complaint, the statement of the pleadings and, without taking testimony in open court, without considering evidence, and without making findings of fact, entered an order granting the respondents an injunction against the strike called by the employees on condition that the respondents restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders or, on the election of the respondents, pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected.[24]

---

[21]R. Vol. 1, pp. 69, 70; Vol. 2, pp. 55-76, 77-98, 99-131.
[22]R. Vol. 1, pp. 70-72; Vol. 2, pp. 132-145, 146-159, 160-173, 174-187.
[23]R. Vol. 1, pp. 58, 59; Vol. 2, pp. 188-215, 216-261.
[24]R. Vol. 1, pp. 102-130, 136-137; Vol. 3, p. 101.

From the portion of the December 18, 1958, order requiring respondents to restore and maintain conditions affected by their General Orders 119 and 120, the respondents appealed[25] to the Court of Appeals, which vacated that portion of the order. The petitioners appealed[26] to the Court of Appeals from that part of the December 18, 1958, order granting a preliminary injunction against the strike, but that portion of the order was affirmed.

The basis for federal jurisdiction in the court of the first instance, the United States District Court for the Northern District of Texas, was alleged by the respondents to be: "Acts of June 25, 1958, United States Code, Title 28, Sections 1331 and 1337; Railway Labor Act, United States Code, Title 45, Sections 151 et seq.; and Interstate Commerce Act, United States Code, Section 1, et seq."[27]

REASONS FOR GRANTING WRIT

I

The decision below should be reviewed because, in circumstances where a carrier seeks an injunction against a strike provoked by its action in unilaterally effecting changes in working conditions alleged to be embodied in collective bargaining agreements on the claim of managerial prerogative, a dispute which the carrier then refers to the Adjustment Board, it erroneously interprets the Railway Labor Act as denying to a district court from

[25]R. Vol. 1, pp. 104-105.
[26]R. Vol. 1, pp. 149-153.
[27]R. Vol. 1, p. 15.

which the injunction is sought jurisdiction to require maintenance of the status quo as a reasonable condition to the grant of the writ.

The decision below should be reviewed because, in circumstances where a carrier seeks an injunction against a strike provoked by its action in unilaterally effecting changes in working conditions alleged to be embodied in collective bargaining agreements on the claim of managerial prerogative, where the carrier declined to maintain the status quo while the matter pended before the National Mediation Board and subsequently referred the matter to the Adjustment Board, it erroneously interprets the Railway Labor Act as denying to a district court from which the injunction is sought jurisdiction to exercise the traditional equity powers of requiring the carrier who seeks the equitable remedy of injunction to stand in court with clean hands and to do equity by restoration and maintenance of the conditions which existed prior to the changes provocative of the strike.

These are important federal questions which have not been but should be settled by this Court. If the decision of the Court of Appeals stands the entire object of the Railway Labor Act can be simply and easily frustrated by any carrier. Under the holding of the Court of Appeals a carrier desiring to effect changes in working conditions embodied in collective bargaining agreements, and at the same time to avoid the procedures of notice, negotiation, mediation, and agreement prescribed in the agreements or in the Railway Labor Act, need only unilaterally order

the changes to be made, decline to maintain the status quo, obtain an injunction against the strike provoked by its action, refer the matter to the Adjustment Board, ride out the years of decision in that Board in enjoyment of the changes unilaterally, and if it is wrong, unlawfully made by it, secure in the knowledge that the court from which it obtained the writ of injunction is powerless to require restoration and maintenance of the status quo as a condition to the grant of the writ.

The dispute here does not involve time claims. It involves the working conditions of the employees as a group. In the present case, collective agreements were in effect between the respondents and each of the Brotherhoods. Those agreements provide for notice and negotiation concerning establishment of or changes in intradivisional district runs or numbers of crews assigned to them, with resolution of differences by Committees or officials designated in the collective bargaining agreements, and with the right of either party to invoke the services of the National Mediation Board. Upon the theory that the arrogation by the respondents of the right to make changes unilaterally which they had agreed in collective bargaining agreements to make upon notice, negotiation, and agreement amounted to changes in agreements affecting working conditions, it would appear that the respondents have violated Section 6 of the Railway Labor Act, 45 U. S. C. Section 156, by not following the procedure therein prescribed. If, arguendo, on authority of *Order of Railway Conductors v. Pitney, 326 U. S. 561*, the dispute may be

properly referable to the Adjustment Board, then in the event the contentions of the petitioners are ultimately sustained by the Adjustment Board, the petitioners' cause will be lost if the conditions which existed prior to the changes which provoked the strike are not restored and maintained pending decision by that Board. If the Adjustment Board sustains the position of the petitioners, it will have determined that the respondents could not lawfully have made the changes without notice to and negotiation and agreement with the petitioners. It will be observed that the changes unilaterally effected by the respondents involve the abolition of old, and the establishment of new, home terminals. It will be understood at once that such disruptive changes materially affect the lives and affairs of the employees. If such changes can be made by the respondents only upon negotiation and agreement with the petitioners, which the petitioners contend the respondents have solemnly bound themselves by agreement to do, then the petitioners will have the right and opportunity to negotiate for some compensation not necessarily in terms of money for the disruptive impact of the changes upon the lives and affairs of the employees. If the petitioners' position is correct, the action of the respondents in unilaterally making the changes is unlawful. If the changes so unilaterally made by the respondents are allowed to remain in effect during the years of the decision of the Adjustment Board in this dispute, then upon a determination by that Board that the position of the petitioners is correct, petitioners will have no adequate remedy at law. It is

true, as the respondents have heretofore in this litigation claimed and will no doubt here urge, that the Adjustment Board can award money damages. But this would not compensate for the valuable right which the employees in the interim will have lost; i.e., the right to negotiate for conditions to compensate the employees for the adverse effect of the changes desired.

If the position of the petitioners is sustained by the Adjustment Board, it will have been determined that the changes unilaterally placed in effect by the respondents could not have lawfully been made except upon the procedure provided in the agreements or in accordance with Section 6 of the Railway Labor Act. The placing of the changes into effect during the pendency of the dispute before the Adjustment Board will have completely frustrated the object of Section 6 of the Railway Labor Act which specifically provides that in every case where notice of an intended change in working conditions embodied in collective bargaining agreements has been given or the services of the National Mediation Board have been requested by either party, working conditions shall not be altered by the respondents until the controversy has been finally acted upon by the Mediation Board or unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

In *Order of Railway Conductors v. Pitney*, supra, this court did not order the grant of a temporary injunction to maintain the status quo pending the decision of the dispute

over interpretation of the agreements. It would appear to be likely that the Court considered the grant of a temporary injunction in that case inappropriate for the reason that the court held that the district court had supervisory power to instruct its trustees, who were operating the carrier, and the jurisdiction to interpret the collective bargaining agreements for that purpose. The district court had interpreted the collective bargaining agreements in a way contrary to the position of the petitioner in that case. This court reviewed the evidence and concluded that the court's findings on which its instructions to its trustees were based were not clearly erroneous and to the extent that it constituted instructions to its trustees, affirmed the order of the district court. No determination that the position of the petitioners is without merit exists here. The reasons stated by Justice Rutledge in the dissenting opinion in *Order of Railway Conductors v. Pitney*, supra, for the maintenance of the status quo while a dispute over interpretation of agreements pends in the Adjustment Board are particularly presuasive here. Justice Rutledge said:

> "In my opinion, however, petitioners are entitled to immediate temporary relief, pending the determination of the Adjustment Board, in order to assure compliance with Section 6, if the Board should decide in their favor.
>
> "Section 6 enjoins a clear and positive duty on the part of carriers and employees, a duty which is judicially enforceable, since no other remedy is provided. The opinion of the Court so rules as I understand it, for otherwise there would be no reason for holding the cause. But if, pending the Board's determination, the change forbidden by Section 6 takes place and the

Board's decision turns out to be in favor of the petitioners, the very purpose of Section 6 will have been defeated. Its object is to maintain the status quo, pending the expiration of the period provided by the section for allowing the processes of negotiation, mediation and conciliation to have play. It is to prevent changes being made until these processes have been exhausted or the prescribed waiting period has expired without bringing them into effect. See Brotherhood of R. Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50; cf. Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711.

"The decision of the Board will not restore this rightful status quo for the period required for making its determination, including the time now gone by, or in fact for any later period. The only relief the Board can give is either 'an administrative declaratory determination' or an award of money damages, subject to the special provision for judicial review. Although the latter remedy would afford partial vindication of private rights, it does not safeguard the public interest, in accordance with the primary design of Section 6. And in many cases it may be impossible for a court to effectuate the Board's decision for the future with adequate restorative measures."

Respondents will argue that if in a suit by a carrier for injunction against a strike, the carrier is required to maintain the status quo pending the determination by the Adjustment Board of the dispute between it and its employees over a proposed change in conditions, a disastrous pattern will be set for the railroad industry; that every time a railroad makes an operating change, even though authorized by or not prohibited by its labor agreements, the union will claim an agreement violation and threaten to strike and in order to prevent a strike, the railroad will

seek an injunction and submit the union's claim to the Adjustment Board or other appropriate agency and while the claim is pending before such Board or agency the court will compel the railroad either to restore the operating condition or pay the affected employees the sums of money which they would have received had such operating change not been made with the end result not intended by the Railway Labor Act that no operating change, even though authorized by or not prohibited by an agreement can be made without prior approval of such board or agency. The complete answer to this argument would appear to be that a court of equity, without prejudging the case or binding any board to a determination upon the merits of the controversy, can readily perceive whether the claim of a union that an operational change by the carrier violates an agreement is transparent, ephemeral, or sham, or whether real and substantial. The Court of Appeals, in vacating that part of the order requiring the restoration and maintenance of the status quo, held that the exclusive jurisdiction in interpretive disputes given to the Adjustment Board by the Railway Labor Act denies to the district court from which an injunction to protect the jurisdiction of that Board is sought, jurisdiction even to inquire preliminarily into whether there is merit in the dispute referred to the Board. This rule would certainly circumscribe the court of equity. It would not appear to be sound. In *Order of Railway Conductors v. Pitney*, supra, this court recognized a situation in which a district court could properly inquire into the merits of a dispute referred to the Adjustment Board.

It could hardly be tenably argued that if the changes provocative of the strike had not been made at the time of the issuance of the temporary restraining order the enjoining court could have ordered the maintenance of the status quo eo instanter. Yet it is only by virtue of a deliberate violation by the respondents of the explicit provisions of the Railway Labor Act that the changes had been made at that time. On October 2, 1958, the respondents published General Orders 119 and 120 notifying the employees that on October 19, 1958, the changes which provoked the dispute and strike would be made.[28] The petitioners protested, requested cancellation of the general orders, and invoked the services of the National Mediation Board. On October 14, 1958, the National Mediation Board advised the respondents that the petitioners had invoked the services of that Board.[29] The National Mediation Board was on the case until it closed its file on November 5, 1958.[30] In such a situation Section 6 of the Railway Labor Act specifically and explicitly proscribes any change in the status quo. Nonetheless, in apparently cynical disregard of the Railway Labor Act, the respondents placed the changes into effect on October 19, 1958. They then contended and now contend that the district court from which they sought and obtained an injunction against the strike provoked by their action could not as a reasonable condition to the grant of the injunction require the restoration and maintenance of the status quo pending the decision of the Adjustment Board

[28]R. Vol. 1, p. 66.
[29]R. Vol. 1, p. 66.
[30]R. Vol. 1, p. 66.

to which the respondents referred the dispute some thirty-four days after obtaining the temporary restraining order.

The Court of Appeals held that the district court in such circumstances could not on any theory of requiring the respondents to come into equity with clean hands or upon any other theory whatsoever require the restoration and maintenance of the status quo as a condition to the grant of the injunction sought. In view of the fact that it was only by virtue of the respondents' deliberate violation of the Railway Labor Act that the status quo eo instanter the issuance of the temporary restraining order was the changed conditions which provoked the strike, the dispute over which had arisen days before the change, the holding of the Court of Appeals would appear to lend judicial sanction to contempt for law. Certainly *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al., 353 U. S. 30, 42*, is authority for the grant of an injunction against a strike of employees to protect the jurisdiction of the Adjustment Board. It would, however, nowhere appear therein that this court would deny to an enjoining court the traditional equity power to require one who seeks the equitable writ to stand in court with clean hands and to do equity. The court stated in *Inland Steel Company v. United States, 306 U. S. 153:*

> "A court of equity 'in the exercise of its discretion frequently resorts to the expedient of imposing terms and conditions upon the party at whose instance it purports to act. The power to impose such conditions is founded upon and arises from the discretion which the court has in such cases to grant, or not to

> grant, the injunction applied for. It is a power inherent in the court, as a court of equity, and has been exercised from time immemorial.' "

II

The decision of the court below should be reviewed for the reason that in a situation where a carrier and its employees have agreed upon procedural steps to be followed before new intradivisional runs may be established and where the carrier has agreed not to make changes in runs or terminals, or rearrangements of runs, without notice to and agreement by the employees, it erroneously interprets the Railway Labor Act as denying to the employees the right to strike in an endeavor to compel the carrier to comply with such agreements before new intradivisional runs are established.

This is an important federal question which has not, but should be, settled by this court. This court noted in *Brotherhood of Railroad Trainmen v. Chicago R. & I. R. Co.*, *353 U. S. 30*, (in footnote 24) that:

> "The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a 'major dispute', *Brotherhood of Railroad Trainmen v. Toledo P. & W. R. Co.*, 321 U. S. 50. In such a case, of course, the Railway Labor Act does not provide a process for a final decision like that of the Adjustment Board in a 'minor' case."

It would appear that when a carrier has agreed, as here in the case of the agreements with the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, that if desirous of establishing

new intradivisional runs, it will give notice and negotiate in good faith with the right in either party in the event of failure to agree to invoke the services of the National Mediation Board, a unilateral attempt to establish new intradivisional runs to which the employees did not agree and invoked the services of the National Mediation Board produced a major, not a minor, dispute.

It would appear that when a carrier has agreed, as here in the case of the agreements with the Brotherhood of Railroad Trainmen and the Order of Railway Conductors and Brakemen, that it will not change tabulated runs except on the justification of business conditions, and ten days' notice, in agreements which provide that no ruling as to any article in the agreement shall be effective until agreed by the parties, and unilaterally and without agreement, attempts to change a tabulated run when the Railway Labor Act provides specifically that no change shall be made by a carrier in rules and working conditions except as provided in the agreement, or except by notice under Section 6 of the Act, with the right of either party to invoke the services of the National Mediation Board in the event of failure to agree, the resulting dispute is a major, not a minor, one.

The respondents contend this is a minor dispute for determination by the Adjustment Board. Apparently the rationale of their contention is that, notwithstanding the plain and simple terms of the provisions concerned, the respondents claim they have a right under the agreement to make changes unilaterally and without agreement; that,

therefore, the dispute is one as to the application or meaning of a collective bargaining agreement and thus a minor dispute referable to the Adjustment Board. It can be demonstrated that this contention is not tenable. Section 2, Seventh, of the Railway Labor Act provides that no change in rules or working conditions embodied in agreements may be made by a carrier except in the manner provided in the agreements or in Section 6 of the Act. Section 6 provides that a carrier desirous of making a change in rules or working conditions of its employees shall give at least 30 days' written notice, negotiate in good faith, with the right in either party to invoke the services of the National Mediation Board. A carrier obeying the directive of the statute and giving notice and negotiating a desired change in rules or working conditions, in the event of failure to agree, has provoked a major dispute for jurisdiction of the National Mediation Board. If the respondents' contention here were correct, a carrier heedless of the provisions of the Act, could unilaterally make a change in working conditions, simply claim that it has the right to make the change unilaterally under the agreement, even though the agreement would appear to state clearly otherwise, and defeat jurisdiction of the National Mediation Board. On that postulate, a carrier could, in violation of the Railway Labor Act, usurp to itself the right to make unilateral changes in working conditions embodied in agreements and frustrate the procedure provided by the Act.

It can be demonstrated further that the dispute here is a major one, referable to the National Mediation Board, and not a minor one, referable to the Adjustment Board. Article 4 of the agreements between respondents and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen embodies the working condition that the respondents shall have no right to establish new intradivisional runs except on notice, negotiation, agreement, and, at either party's invocation, mediation. To eliminate Articles 4 from the agreements the respondents would have to serve a Section 6 notice in accordance with the provisions of the Railway Labor Act. The respondents' attempt to establish new intradivisional runs unilaterally and without negotiation, on the claim that they have the right so to do, constitutes an attempt by the respondents to change the working conditions embodied in the agreement that denies them such a right, without having given notice of the intended change as provided in Section 6 of the Railway Labor Act.

It is clear that the dispute here is a major dispute, not a minor dispute. And, since it is a major dispute, and it is perfectly clear from the amended complaint that the respondents have violated their obligations imposed upon them by law involved in this labor dispute, and have failed to make every reasonable effort to settle such dispute by negotiation, the Norris-LaGuardia Act forbids the issu-

ance of an injunction against the strike. *Brotherhood of Railroad Trainmen v. Toledo P. & W. R. Co., 321 U. S. 50.*

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

J. HART WILLIS,
1408 Tower Petroleum Building,
Dallas 1, Texas,
Attorney for Petitioners.

Of Counsel:

WAYLAND K. SULLIVAN,
1370 Ontario Street,
Cleveland 13, Ohio.

HAROLD C. HEISS,
Keith Building,
Cleveland 15, Ohio.

CLARENCE E. WEISEL,
1706 Union Commerce Building,
Cleveland 14, Ohio.

V. C. SHUTTLEWORTH,
1120 Merchants National Bank Building,
Cedar Rapids, Iowa.

WILLIAM P. FONVILLE,
2232 Republic National Bank Building,
Dallas 1, Texas.

HART WILLIS, JR.,
1408 Tower Petroleum Building,
Dallas 1, Texas.

PROOF OF SERVICE

I, J. Hart Willis, one of the attorneys for the Brotherhood of Locomotive Engineers, et al., Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29 day of June, 1959, I served copies of the foregoing petition for writ of certiorari on the Respondents, Missouri-Kansas-Texas Railroad Company of Texas, by mailing copy in duly addressed envelopes, with first-class postage prepaid, to Respondents' attorneys of record, as follows: to W. A. Thie, M. E. Clinton, and M. W. Reeves, Esquires, Barrett Building, Denison, Texas; and to O. O. Touchstone, Esquire, 405 Southland Life Building, Dallas 1, Texas.

J. Hart Willis

J. HART WILLIS,
Attorney for Brotherhood of Locomotive Engineers, et al., Petitioners,
1408 Tower Petroleum Building,
Dallas 1, Texas.

APPENDIX A

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Appellants-Appellees,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Appellees-Appellants.

(AND REVERSE TITLE).

Appeals from the United States D. trict Court for the Northern District of Texas.

(April 20, 1959.)

Before RIVES, JONES and WISDOM, Circuit Judges.

RIVES, Circuit Judge: At 6:00 o'clock A. M. on November 6, 1958, the engineers, firemen, conductors, brakemen and switchmen of appellant Railroad Companies

struck and ceased work. The strike was called without notice to the Railroad Companies by the four railroad labor organizations.[1] The strike stopped all train operations of the Railroad Companies over 2919 miles of track extending from St. Louis and Kansas City, Missouri, on the north to Oklahoma City, Oklahoma, and to Houston and San Antonio, Texas, on the south. The strike was halted on the same day by a temporary restraining order issued by the district court upon the application of the Railroad Companies.

The strike had been precipitated by General Orders 119 and 120, issued October 2, 1958, by the Railroad Companies, effective at 12:01 A. M. on October 19, 1958. Those orders made certain changes in the intradivisional runs of freight trains and the away-from-home terminals for freight service between Wichita Falls, Texas, and Forgan, Oklahoma, a distance of 302 miles. Before the orders became effective, the National Mediation Board advised the Railroad Companies that the employees had invoked the services of that Board, but the Railroad Companies nonetheless placed the orders into effect as scheduled. About a month later, but prior to the hearing of their application for a preliminary injunction, the Railroad Companies undertook to submit the matters in dispute to the National Railroad Adjustment Board, and in part, to the National Mediation Board, and to Committees established by the collective bargaining agreements.

[1]The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen. The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen.

On December 18, 1958, the district court granted a preliminary injunction enjoining the strike pending decisions by said Boards and Committees, and in the same order, directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders or, on the election of the Companies, pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected.

On December 29, 1958, the Railroad Companies filed notice of appeal from that part of the order requiring them to restore and maintain the status quo pending the injunction. On January 5, 1959, they sought from the district court a stay of that portion of the order. The court then ruled that the injunction had been granted on condition that the Railroad Companies restore and maintain the status quo, and denied the stay requested by them and entered an order so reciting. On January 6, 1959, the Railroad Companies obtained from this Court[2] a stay of that portion of the order dated December 18, 1958, requiring them to restore the status quo. On January 13, 1959, the Railroad Companies attempted to appeal from the district court's order of January 5, 1959.[3] On January 15, 1959, the defendant employees and labor organizations appealed from that part of the order of December 18, 1958, granting

[2]The panel being composed of Circuit Judges Tuttle, Jones, and Brown.

[3]In view of our ruling on the appeal from the part of the order of December 18, 1958, requiring the restoration of the status quo, we find it unnecessary to rule upon the attempted appeal from the order of January 5, 1959.

a preliminary injunction against them. The 302-mile line over which this controversy arose constitutes a separate seniority district for the engineers, firemen, conductors, and brakemen.

Prior to October 19, 1958, way freight crews on this line were assigned as follows:

> Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew;
>
> One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;
>
> One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and
>
> One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Such way freight assignments, or similar way freight assignments between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, have been in existence for more than twenty-five years.

Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

> Assigned two way freight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and
>
> Assigned one way freight crew to operate from Elk City, Oklahoma, to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This arrangement of way freight service was made in accordance with General Order No. 119.

Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Forgan, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal for such crews, leaving North Yard (Wichita Falls, Texas) as the home terminal and Forgan, Oklahoma, as an away-

from-home terminal for such crews. This change in away-from-home terminals was made in accordance with General Order No. 120.

In response to the district court's question as to "the number of men that were put out of employment by the change" the counsel for the Railroad Companies replied, "There were ten."

While not so strongly urged,[4] the attacks of the defendants, cross-appellants, on the jurisdiction of the district court to grant the preliminary injunction are matters which cannot be waived and which we should consider at the outset. Indeed, we find the jurisdictional questions practically determinative of the appeal as well as of the cross-appeal.

No testimony of witnesses was heard in open court before the preliminary injunction was issued, nor did the district court make any findings of fact. Absent such testimony and findings, the defendants and cross-appellants insist that Section 7 of the Norris-La Guardia Act, 29 U. S. C. A. §107, deprived the district court of jurisdiction. The pertinent provisions of that section are quoted in the margain.[5]

---

[4]The position of appellees and cross-appellants is thus stated in brief:
"* * * If the condition requiring the restoration of the status quo or the optional alternative payments be maintained in the order, the Employees are content to abide the determination of the various submissions made of the controversy by Carriers. Otherwise not."

[5]"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examina-

The material facts were, however, admitted; that is, the strike, the matters in controversy (though not their legal effect), and the submissions by the Railroad Companies of the dispute to the National Railroad Adjustment Board and, in part, to the National Mediation Board and to the Committees established by agreement. Under such circumstance, the specific provisions of the Railway Labor Act, 45 U. S. C. A. §§ 151, et seq., take precedence over the more general provision of the Norris La Guardia Act. *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al.*, 1957, 353 U. S. 30, 42.

The Railway Labor Act creates the National Railroad Adjustment Board for the resolution of "minor grievances" in the event that the parties are unable to agree upon their settlement, that is compulsory arbitration in this limited field. It does not provide a process for a final decision of a "major dispute." *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Rail-*

---

tion) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will continue unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial or relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C.A. §107

road Company, et al., supra. As footnote 24 to the opinion in that case observes:

> "The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a 'major dispute.' *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U.S. 50." (353 U.S. at p. 42.)

The differences between major disputes which must still be settled through traditional processes of agreement and minor disputes which the National Railroad Adjustment Board has been empowered finally to resolve has been elaborately discussed in *Elgin, J. & E. R. Co. v. Burley*, 1945, 325 U. S. 711, 722, et seq., from which we quote briefly:

> "The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> "The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e.g., claims on account of personal injuries. In

> either case the claim is to rights accrued, not merely to have new ones created for the future." (325 U.S. at p. 723.)

In the present case, collective agreements were in effect between the Railroad Companies and each of the Brotherhoods. The Brotherhoods claim that those agreements provide for notice and negotiation concerning establishment of or changes in district runs or numbers of crews assigned to them, with resolution of differences by Committees or officials designated in the collective agreements, and with the right of either party to invoke the services of the National Mediation Board. Upon the theory that the changes effected by Orders 119 and 120 amount to changes in *agreements* affecting rates of pay, rules or working conditions, the Brotherhoods claim that the Railroad Companies have violated Section 6 of the Railway Labor Act, 45 U. S. C. A. §156, by not following the procedure therein prescribed. The Railroad Companies claim that the existing agreements relate to establishment of service, not to changes or rearrangements of service long established, and that they had retained their powers of management to change terminals and rearrange runs when business or changed conditions justify.

Without intimating any view as to their validity, we think it clear that the respective *contentions* of the Railroad Companies and of the employees are based upon existing agreements; their *claims* are to rights accrued and not to have new rights created for the future. The dispute is thus a "minor" dispute, the resolution of which is committed to the National Railroad Adjustment Board. Pri-

mary jurisdiction of that Board cannot be defeated by the emphasis with which any party asserts that its position is clearly the only rightful one, nor would it be appropriate for this Court to discuss the relative merits of questions which must be decided by that Board.

We conclude that the district court had jurisdiction to grant the preliminary injunction against a strike in this labor dispute in order to protect the primary jurisdiction of the National Railroad Adjustment Board to resolve the dispute.

Turning now to the appeal of the Railroad Companies, we do not find it necessary to decide whether the order of which they complain was a preliminary mandatory injunction against them or simply a condition upon which they were granted a preliminary injunction against the defendants. Whether injunction or condition, the order directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, or, at the election of the Companies, to pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected. If we accept the premise, heretofore discussed and decided, that the dispute precipitated by General Orders 119 and 120 was a minor dispute, which the National Railroad Adjustment Board alone had jurisdiction to resolve, then it is clear that the district court could not pass any sort of preliminary judgment upon the merits of that dispute. That kind

of jurisdiction denied to the district court by the provisions of the Railway Labor Act cannot be exercised under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunction, of requiring the plaintiff Railroad Companies to come into equity with clean hands, or upon any other theory whatsoever. To hold otherwise would permit the district court, in every case where either a railroad company or a labor organization seeks an injunction to protect the jurisdiction of the National Railroad Adjustment Board, to lift itself by its bootstraps into some kind of jurisdiction to pass preliminary judgment upon the merits of disputes committed to the exclusive jurisdiction of the Board.

That part of the judgment of the district court of December 18, 1958, requiring the restoration and maintenance of the status quo or the optional alternative payments, is therefore vacated; and, as thus modified, said judgment is affirmed.

MODIFIED AND AFFIRMED.

A true copy
Test:
/s/ EDWARD W. WADSWORTH
EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana
MAY 15 1959
(SEAL)

APPENDIX B

JUDGMENT

Extract from the Minutes of April 20, 1959.

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
versus
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
(AND REVERSE TITLE).

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that that part of the judgment of the district court of December 18, 1958, requiring the restoration and maintenance of the status quo or the optional alternative payments, in this cause be, and the same is hereby, vacated; and, as thus modified, that judgment be, and it is hereby affirmed;

It is further ordered and adjudged that appellees-appellant, The Brotherhood of Locomotive Engineers, and others, be condemned in solido to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.